ENVIRONMENT, SAFETY & HEALTH

SAFETY & HEALTH NOTE

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OSHA Drafts a Proposed Safety and Health Program Rule

The Occupational Safety and Health Administration (OSHA) has drafted a proposed rule, which when promulgated will become the basis for requiring the nation's 6.5 million workplaces to implement a basic, fundamental safety and health program.

As drafted, the proposed rule is intended to require that each workplace has a basic safety and health program that is appropriate to its specific conditions. In drafting this proposal, OSHA has specified the core elements that each program must contain. The core elements specified in OSHA's draft proposal include the following:

- 1 management leadership and employee participation
- 2 hazard identification and assessment
- 3 hazard prevention and control
- 4 information and training
- 5 evaluation of program effectiveness

Under the draft proposal, OSHA has added a "grandfather" clause to address situations where employers had already implemented some form of a safety and health program prior to the effective date of the rule. This provision permits employers to continue using their existing program provided that the following are met:

- 1 The employer's program satisfies the basic obligation for each core element in the OSHA rule.
- 2 The employer can demonstrate the effectiveness of any provision of the employer's program that differs from the core elements set forth in the OSHA rule.

The important part of this provision will be that the "burden of proof" in demonstrating the effectiveness of differing program elements will rest with the employer.

Publication Planned for April

The OSHA regulatory agenda, published November 9, 1998, in the <u>Federal Register</u>, lists the expected publication date of the rule as April 1999. The draft text of this rule was presented to OSHA's National Advisory Committee on Occupational Safety and Health (NACOSH) at its meeting on November 9-10, 1998, in Washington, D.C.

According to a recent article published by the Bureau of National Affairs, Inc. (BNA Article No. 53221402), OSHA considers this safety and health program rule to be the "centerpiece" of the agency's regulatory plan. The full text of the draft proposal can be obtained directly from OSHA and is also available, online at http://www.osha-slc.gov/SLTC/safetyhealth/nshp.html.

Impact for DOE

The Department of Energy (DOE) has long advocated the importance of comprehensive worker safety and health management programs in its corporate safety and health policies. Presently, DOE requires such programs under the Integrated Safety Management (ISM) System and through DOE Order 440.1A, Worker Protection Management for DOE Federal and Contractor Employees, March 27, 1998. Both require DOE and contractor organizations to maintain a written worker protection program in addition to implementation of OSHA's workplace safety and health standards. By policy, DOE adopts applicable OSHA standards and rules as they are promulgated.

Since DOE sites have safety and health programs in place to meet DOE expectations, they should be covered by the "grandfather" clause of this proposed rule. In addition, DOE program requirements, such as those found in DOE Order 440.1A, are consistent with the core elements or tenets of the proposed OSHA rule; thus, DOE sites should be able to demonstrate that their programs satisfy the basic obligations of the OSHA proposal.

A Head Start for Some

The newly proposed program rule is based on "core elements," which have essentially the same focus as the "tenets" of the OSHA Voluntary Protection Programs (VPP), although employers will not be expected to surpass minimal compliance and achieve "excellence" as is required by OSHA-VPP. It is evident, however, that those DOE sites that are already in DOE-VPP or are working toward achieving recognition in DOE-VPP will have a head start on complying with the newly proposed rule. The Secretary's recent memorandum, "Safety-Accountability and Performance," issued March 3, 1999, sets the implementation of ISM as a primary goal for the complex. Effective implementation of ISM, coupled with worker involvement and management commitment, should satisfy the requirements of the proposed OSHA rule. Secondarily, it should position contractors to pursue recognition under DOE-VPP.



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